

Water Infrastructure Protection Act (WIPA) N.J.S.A. 58:30-1 et seq.

Draft Guidance for DEP Review of Emergent Condition Certification by System Owner

WIPA Authority

- Allowance of the long-term lease or sale of municipal water assets to a capable private or public entity:
 - Without referendum;
 - *If an emergent condition exists*
- Role of DEP: Within 30 days of receipt of the resolution, the Department must either approve or reject the owner's emergent condition certification.

WIPA Process as Identified in N.J.S.A. 58:30

1. Owner Initiated Pre-Determination

- Emergent condition (EC) determined
- Independent financial analysis to be approved by owner
- (Once approved by owner) Submit copies of financial analysis to BPU, Local Government Services, DEP and public
- Public Hearing
- **Municipal resolution certifying EC & intent to lease/ sell by 2/3rd resolution**

2. DEP Review

- Review (if complete); and
- Render a decision (30 days) to approve/ disapprove "owner's emergent conditions certification"

WIPA Process as Identified in N.J.S.A. 58:30

Stages after DEP approval

1. Publish notice of Approval
2. Protest Period (public petition/ referendum)
3. RFQ/ RFP
4. Selection/ Negotiation of Sale Terms
5. BPU/ DCA Review
6. Contract/ Sale

DEP Guidance Document

- To provide municipalities, their advisors, and the public with guidance on the information the NJDEP recommends be provided in order to perform its duties under WIPA in reviewing a Municipal Certification of Emergent Conditions
- Each claim of emergent condition(s) will be evaluated on a case-by-case basis.

Emergent Conditions (EC)

1. Area of critical water supply concern;
2. Significant compliance issues with DEP;
3. MCL violation, deficiency in availability, potability, or provision of potable water or distribution/ treatment of wastewater;
4. Demonstrated lack of historic investment, repair or sustainable maintenance or material damage;
5. Owner lacks financial, technical, or managerial capacity to operate in fiscally sustainable manner

Materials for Department Review of Municipal Emergent Conditions Certification Resolutions

- Municipal Resolution Certifying Emergent Condition(s):
 - Signed by Mayor, designee *and* licensed P.E.
- Evidence of Transmittal of Analysis of Independent Financial Advisor to appropriate parties (DEP, BPU, DCA-DLGS) and availability for public review;
- Evidence of Public Hearing Notice
 - Transcript or summary of Public Hearing Testimony
- Evidence that municipality is not a first class city with a population greater than 270,000 or a Joint Meeting
- Supporting material to demonstrate the existence of the emergent condition(s)

Materials for Department Review of Municipal Emergent Conditions Certification

- Evidence of Emergent Conditions
 - Explanation/ definitions of each of the five (5) Emergent Conditions;
 - Documentation to submit to DEP to demonstrate the existence of the emergent condition(s)

EC#1: Area of Water Supply Concern

- Satisfied if water system* is located within the geographical delineation of the ACWSC even if it does not derive its water supply from a designated aquifer within the ACWSC.
- Not satisfied if the water system is located outside of an ACWSC even if purchases water from another water system that is located within an ACWSC

** A water system includes water source locations (intakes, wells), treatment facilities, water storage, and/or distribution infrastructure. It does not include an office or other facility serving administrative functions.*

EC#1: Area of Water Supply Concern

- **Provide:**
 - System Name, PWSID, Allocation Permit #
 - For each system component(s) claiming to be located in ACSWSC:
 - Description
 - Location (GIS map),
 - Designation of ACWSC I or II

EC#2: Significant compliance issues with DEP

- The owner of the system is a significant noncomplier (SNC) for their NJPDES permit; or
- The owner has been the subject of a formal enforcement action initiated by the Department; or
- Is substantially out of compliance with an administrative consent order, settlement agreement or stipulation of settlement, or judicial consent order entered into with the Department.

EC#2: Significant compliance issues with DEP

- **Provide:**
 - Written documentation of non-compliance; and
 - An explanation why the system owner failed to submit completed DMR's; or
 - An explanation of the cause of the effluent violations; or
 - A description of the circumstances that caused the permittee to be out of compliance with the administrative consent order, settlement agreement, stipulation of settlement or judicial consent order.

EC#3: MCL violation; or Deficiency in availability, potability, or provision of potable water; or Deficiency in distribution/ treatment of wastewater

- Inability of the system to function as intended to meet drinking water or wastewater standards/regulatory requirements.
 - A violation of a maximum contaminant level (MCL);
or
 - Deficiency in the availability or potability of water including, but not limited to, the provision of water at adequate volume or pressure; or
 - Deficiency in the ability to convey or treat wastewater.

EC#3: MCL violation; Deficiency in availability, potability, or provision of potable water or Deficiency in distribution/ treatment of wastewater

- **Provide:**
 - Documentation of MCL violation & parameter violated; and
 - Explanation of cause of MCL or other requirements (TT or M&R); or
 - Description of deficiency, current status, capacity, and need (for drinking water or wastewater system)

EC#4: Demonstrated lack of historic investment, repair, or sustainable maintenance or material damage

- “Lack of historical investment, repair or sustainable maintenance” considered the failure to:
 - Implement a successful asset management program; or
 - Operate and maintain the system in conformity with N.J.A.C. 7:10, N.J.A.C. 7:10A, N.J.A.C. 7:19 and N.J.A.C. 7:14A
- “Material damage to the assets of the system” includes:
 - Physical damage; or
 - Avoidable deterioration of system components or personnel assets that prevent a system from complying with all drinking water or wastewater standards/requirements.

EC#4: Demonstrated lack of historic investment, repair, or sustainable maintenance or material damage

- **Provide:** Written report documenting:
 - For lack of historical investment, repairs or sustainable maintenance:
 - Extent of repairs needed; and
 - Extent to which there has been investment toward repairs;
 - For material damage:
 - Cause of damage (incident, poor maintenance, exceeded design life); and
 - Extent to which there has been investment toward repairs
 - How damage affects ability of system to meet demands and/or comply with Standards

EC#5: Owner lacks financial, technical, or managerial capacity to operate in fiscally sustainable manner

- Inability to adequately address any of the four emergent conditions; or
- Inability to operate the system on a sustainable basis in order to support economic activity of municipality

EC#5: Owner lacks financial, technical, or managerial capacity to operate in fiscally sustainable manner

- “Technical capacity”: Physical and operational ability of a water or wastewater system
- “Managerial capacity”: Institutional, administrative, staffing, organizational capabilities
- “Financial capacity”: ability to acquire and manage assure revenue sufficiency, credit worthiness, and fiscal management

EC#5: Owner lacks financial, technical, or managerial capacity to operate in fiscally sustainable manner

- **Provide:**
 - Completed Technical, Managerial and Financial (TMF) Capacity assessment checklist (Appendix); and
 - Supporting documentation for emergent condition owner is unable to adequately address

Questions/ Discussion

- Are the conditions and expected documentation understandable?
- Is there something that is missing?
- Anything DEP should be considering?

You may send comments on the Draft Guidance to Mark.Theiler@dep.nj.gov by Friday January 29, 2016